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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,845	12/09/2003	Arnold H. Bramnick	BOC9-2003-0040 (410)	5227

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EXAMINER
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LIU, ERIC

ART UNIT	PAPER NUMBER
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3628

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/07/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/730,845	<b>Applicant(s)</b> BRAMNICK ET AL.	
	<b>Examiner</b> Eric Liou	<b>Art Unit</b> 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 4/5/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Slivka et al., U.S. Publication No. 2003/0225600.
3. As per claim 1, Slivka teaches a method for re-booking passengers from cancelled flights, comprising the steps of: obtaining passenger data for said passenger (Slivka: Figure 1, "120", paragraph 0033, and paragraph 0034, "passenger information may be obtained"); comparing said passenger data for said passenger with at least one rule (Slivka: paragraph 0024, "Rules engine 113 may be a set of instructions, that when executed by a processor (e.g., CPU 104) perform a process that determines values associated passengers based on one or more travel rules."); and offering re-booking flights to said passenger based upon said comparing step (Slivka: Figure 2, "235", Figure 3, and paragraph 0045).
4. As per claim 2, Slivka teaches the method of claim 1 as described above. Slivka further teaches the said passenger data for said passenger comprises the remaining unflown ticket value, the passenger re-booking cost, and the passenger lifetime value (Slivka: paragraph 0035, "The additional passenger information may include, but is not limited to, a number of flights a

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passenger has purchased on a particular carrier over a period of time (i.e., frequent flier information), the personal profile status of the passenger, and the average cost of the passenger's travel history." The Examiner interprets the average cost of the passenger's travel history to include the unflown ticket value and the passenger re-booking cost.).

5. As per claim 3, Slivka teaches the method of claim 2 as described above. Slivka further teaches the said passenger lifetime value comprises at least one of the frequent flyer status of the passenger and the ticket purchase history of the passenger (Slivka: paragraph 0035).

6. As per claim 4, Slivka teaches the method of claim 1 as described above. Slivka further teaches the said passenger data is provided real time (Slivka: paragraph 0034, "...the passenger information may be obtained from the departure control system, which is the computer system used at the gate before check-in." The Examiner interprets the departure control system as providing passenger data in real time.).

7. As per claim 5, Slivka teaches the method of claim 1 as described above. Slivka further teaches the said re-booking flights are determined from flight inventory data and reservation data (Slivka: Paragraph 0032, "Operations database 118" and paragraph 0036, "...re-accommodation driver 111 may retrieve from operations database 118 seat availability information associated with each flight included in the flight schedule information." The Examiner interprets seat availability information to be flight inventory data and reservation data.).

8. As per claim 6, Slivka teaches the method of claim 1 as described above. Slivka further teaches the said passenger data is obtained from at least one selected from the group consisting of accounting data, customer relationship management data, and loyalty data (Slivka: paragraph 0035, see passenger database 120).

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9. As per claim 7, Slivka teaches the method of claim 6 as described above. Slivka further teaches a value score for said passenger is obtained using said passenger data (Slivka: paragraph 0037, "re-accommodation driver 111 may determine a PNR value", and said re-booking flights are offered to said passenger based upon said passenger value score (Slivka: paragraphs 0044 and 0045).

10. As per claim 8, Slivka teaches a machine readable storage having stored thereon a computer program having a plurality of code sections executable by a machine (Slivka: paragraph 0021, "...secondary storage device 108 may store data and/or program instructions...") for causing the machine to perform the steps of: obtaining passenger data for said passenger (Slivka: Figure 1, "120", paragraph 0033, and paragraph 0034, "passenger information may be obtained"); comparing said passenger data for said passenger with at least one rule (Slivka: paragraph 0024, "Rules engine 113 may be a set of instructions, that when executed by a processor (e.g., CPU 104) perform a process that determines values associated passengers based on one or more travel rules."); and offering re-booking flights to said passenger based upon said comparing step (Slivka: Figure 2, "235", Figure 3, and paragraph 0045).

11. As per claim 9, Slivka teaches the method of claim 8 as described above. Slivka further teaches the said passenger data for said passenger comprises the remaining unflown ticket value, the passenger re-booking cost, and the passenger lifetime value (Slivka: paragraph 0035, "The additional passenger information may include, but is not limited to, a number of flights a passenger has purchased on a particular carrier over a period of time (i.e., frequent flier information), the personal profile status of the passenger, and the average cost of the passenger's

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travel history.” The Examiner interprets the average cost of the passenger’s travel history to include the unflown ticket value and the passenger re-booking cost.).

12. As per claim 10, Slivka teaches the method of claim 9 as described above. Slivka further teaches the said passenger lifetime value comprises at least one of the frequent flyer status of the passenger and the ticket purchase history of the passenger (Slivka: paragraph 0035).

13. As per claim 11, Slivka teaches the method of claim 8 as described above. Slivka further teaches the said passenger data is provided real time (Slivka: paragraph 0034, “...the passenger information may be obtained from the departure control system, which is the computer system used at the gate before check-in.” The Examiner interprets the departure control system as providing passenger data in real time.).

14. As per claim 12, Slivka teaches the method of claim 8 as described above. Slivka further teaches the said re-booking flights are determined from flight inventory data and reservation data (Slivka: Paragraph 0032, “Operations database 118” and paragraph 0036, “...re-accommodation driver 111 may retrieve from operations database 118 seat availability information associated with each flight included in the flight schedule information.” The Examiner interprets seat availability information to be flight inventory data and reservation data.).

15. As per claim 13, Slivka teaches the method of claim 8 as described above. Slivka further teaches the said passenger data is obtained from at least one selected from the group consisting of accounting data, customer relationship management data, and loyalty data (Slivka: paragraph 0035, see passenger database 120).

16. As per claim 14, Slivka teaches the method of claim 13 as described above. Slivka further teaches a value score for said passenger is obtained using said passenger data (Slivka:

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paragraph 0037, "re-accommodation driver 111 may determine a PNR value", and said re-booking flights are offered to said passenger based upon said passenger value score (Slivka: paragraphs 0044 and 0045).

17. As per claim 15, Slivka teaches a system for re-booking passengers who are unable to travel on scheduled flights, comprising: means for obtaining re-booking flight candidates for said passengers (Slivka: Figure 1, paragraph 0033, and paragraph 0034); means for obtaining passenger data for said passengers with at least one rule (Slivka: Figure 1 and paragraph 0024); and means for selecting passengers for re-booking flights based upon said passenger data (Slivka: Figure 1 and paragraph 0045).

### ***Double Patenting***

18. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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19. Claims 1, 2, 4, 6, 8, 9, 11, and 13 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 7, 4, 8, 13, 19, 16, and 20 of copending Application No. 10/730,851. Although the conflicting claims are not identical, they are not patentably distinct from each other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

20. As per claim 1, the instant application is anticipated by claim 1 of Application No. 10/730,851 in that claim 1 of 10/730,851 contains all the limitations of claim 1 of the instant application. Claim 1 of the instant application therefore is not patently distinct from the 10/730,851 application and as such is unpatentable for obvious-type double patenting.

21. As per claim 2, the instant application is anticipated by claim 7 of Application No. 10/730,851 in that claim 7 of 10/730,851 contains a limitation of claim 2 of the instant application. Claim 2 of the instant application therefore is not patently distinct from the 10/730,851 application and as such is unpatentable for obvious-type double patenting.

22. As per claim 4, the instant application is anticipated by claim 4 of Application No. 10/730,851 in that claim 4 of 10/730,851 contains all the limitations of claim 4 of the instant application. Claim 4 of the instant application therefore is not patently distinct from the 10/730,851 application and as such is unpatentable for obvious-type double patenting.

23. As per claim 6, the instant application is anticipated by claim 8 of Application No. 10/730,851 in that claim 8 of 10/730,851 contains a limitation of claim 6 of the instant application. Claim 6 of the instant application therefore is not patently distinct from the 10/730,851 application and as such is unpatentable for obvious-type double patenting.

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24. As per claim 8, the instant application is anticipated by claim 13 of Application No. 10/730,851 in that claim 13 of 10/730,851 contains all the limitations of claim 8 of the instant application. Claim 8 of the instant application therefore is not patently distinct from the 10/730,851 application and as such is unpatentable for obvious-type double patenting.

25. As per claim 9, the instant application is anticipated by claim 19 of Application No. 10/730,851 in that claim 19 of 10/730,851 contains a limitation of claim 9 of the instant application. Claim 9 of the instant application therefore is not patently distinct from the 10/730,851 application and as such is unpatentable for obvious-type double patenting.

26. As per claim 11, the instant application is anticipated by claim 16 of Application No. 10/730,851 in that claim 16 of 10/730,851 contains all the limitations of claim 11 of the instant application. Claim 11 of the instant application therefore is not patently distinct from the 10/730,851 application and as such is unpatentable for obvious-type double patenting.

27. As per claim 13, the instant application is anticipated by claim 20 of Application No. 10/730,851 in that claim 20 of 10/730,851 contains a limitation of claim 13 of the instant application. Claim 13 of the instant application therefore is not patently distinct from the 10/730,851 application and as such is unpatentable for obvious-type double patenting.

### ***Conclusion***

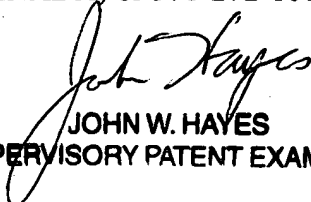
28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bertram et al, U.S. Publication No. 2004/0199411, drawn to a method and system for rebooking a passenger and Gaspard, U.S. Patent No. 6,240,362, drawn to a method to schedule a vehicle in real-time to transport freight and passengers.

The Examiner has cited particular portions of the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Liou whose telephone number is 571-270-1359. The examiner can normally be reached on Monday – Friday, 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
JOHN W. HAYES  
SUPERVISORY PATENT EXAMINER